

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO INTRALATA TOLL)	
COMPETITION, AN APPROPRIATE)	ADMINISTRATIVE
COMPENSATION SCHEME FOR COMPLETION)	CASE NO. 323
OF INTRALATA CALLS BY INTEREXCHANGE)	PHASE I
CARRIERS, AND WATS JURISDICTIONALITY)		

O R D E R

This matter arising upon joint motion of LDDS of Kentucky Inc. (formerly Telcor, Inc.), and LDDS of Indiana Inc. (formerly Telemarketing Communications of Evansville, Inc.) (collectively "LDDS") filed September 8, 1989 to compel South Central Bell Telephone Company ("South Central Bell") to respond to the "First Set of Interrogatories Upon South Central Bell Telephone Company" and the "First Request for Production of Documents" by LDDS, and it appearing to the Commission as follows:

On March 24, 1989, LDDS served upon South Central Bell 43 written interrogatories and 41 requests for production of documents. By this motion, LDDS seeks to compel South Central Bell to respond more fully to Interrogatories 23, 32(g), 35(b), 37(a) and 37(b), and to Production Request 1. LDDS also moves to compel South Central Bell to arrange a time by which LDDS can review the information and documents which South Central Bell had indicated in its responses to Interrogatories 1, 2, 6, 8, 9 and 14, and to Requests for Production Numbers 9, 10, 11, 12, 13, 17, and 29 are available for inspection at its offices.

Interrogatory 23 requests South Central Bell to provide the "traffic sensitive rates" used to calculate the distribution South Central Bell receives from the intraLATA pool. LDDS maintains that South Central Bell's response to this interrogatory is incomplete because it fails to include the carrier common line rates. As noted in South Central Bell's response to the motion, the term, "traffic sensitive rates," as used in the context of proceedings of this nature, generally refers to rates that relate to costs incurred by the carrier that vary with usage. These rates are set out in the response. Carrier common line rates relate to non-traffic sensitive costs but are charged by a carrier on a usage sensitive basis and therefore do not fall within the scope of interrogatory. Nevertheless, South Central Bell in responding to the motion has furnished the information LDDS intended to seek in its interrogatory. Therefore, this issue has been resolved and the motion should be denied.

Interrogatory 32(g) requests the results of any study that South Central Bell may have undertaken and requests an estimate of the amount of intraLATA toll contribution that may be lost if competition is permitted in the intraLATA toll market. In its response to the interrogatory, South Central Bell stated that a study is being made and will be provided when complete. South Central Bell filed the study on September 22, 1989 as part of its responses to the data requests due on that date. Therefore, this issue has also been resolved and the motion should be denied.

Interrogatory 35(b) requests South Central Bell to identify all documents in which the results of any embedded direct analysis

studies for 1984 through 1988 are mentioned, discussed, analyzed, or revealed. South Central Bell, in its response, has refused to furnish the information on the grounds that it is irrelevant, immaterial, and unduly burdensome. Further, in response to the motion, South Central Bell states that the documents which mention or refer to this study are numerous and many have no relevancy to the subject matter of this case, and it would be an impossible task to search all the records of the company to locate them.

Although not bound by the Kentucky Rules of Civil Procedure, it may be noted that in commenting upon what matters may be inquired into on discovery, Bertelsman and Philipps, Ky. Practice, 4th Ed., Civil Rule 26.02 makes the following observation:

The principal governing feature of [Civil Rule 26.02 (1)] is that the matter about which discovery may be had must be "relevant to the subject matter" of the suit, whether it relates to the claim or defense of the examining party or that of any other party. Relevancy is more loosely construed for purposes of discovery than for trial. In allowing greater latitude in discovery, courts have recognized that relevancy to the subject matter rather than the issues presented by the pleadings is the proper guide. Relevant is synonymous with germane.

The information requested in Interrogatory 35(b) is germane to the proceedings and, therefore, relevant for the purpose of discovery. Thus South Central Bell should not be excused from producing the information on that basis. There are, however, other reasons for denying the motion.

To produce the information, South Central Bell will have to search all of its corporate records. This would be a monumental task and the burden it would impose would outweigh the benefit to

be derived from the information. Therefore, for this reason, South Central Bell should not be required to produce the information.

Interrogatory 37(a) inquires whether South Central Bell has conducted any studies to analyze changes in its share of the intraLATA toll market for any time period from January 1, 1984. South Central Bell's answer is that it cannot identify its share of the market because interexchange carriers and resellers offer services that are capable of completing intraLATA calls for which South Central Bell has no data. South Central Bell's answer is clearly not responsive to the question, and it should be compelled to answer.

Interrogatory 37(b) requests South Central Bell to identify all documents in which the results of any studies analyzing changes in its share of the intraLATA toll market [referred to in Interrogatory 37(a)] are mentioned, discussed, analyzed, or revealed. Here again, South Central Bell's answer is not responsive to the question. South Central Bell should be compelled to respond to the interrogatory either by furnishing the information requested or by filing any objections which it believes are valid.

In its request for the production of documents, Item 1 asks South Central Bell to provide a map of Kentucky indicating LATA boundaries and the locations of the company's intraLATA toll facilities (e.g., switches, transmission lines, etc.). In responding to the request, South Central Bell has provided a map which does not designate switch locations or the transmission

lines as requested. The information is relevant to the proceedings, and South Central Bell should be compelled to respond to the request for production. If South Central Bell believes that a map providing all the information that was requested will include proprietary and confidential information, it may petition the Commission for confidential protection of the map.

In responding to Interrogatories 1, 2, 6, 8, 9, and 14 and Requests for Production Numbers 9, 10, 11, 12, 13, 17, and 29, South Central Bell has indicated that the information is now available for review at its offices in Birmingham and Louisville. LDDS and South Central Bell, however, have been unable to arrange a mutually acceptable date for LDDS to review the information. If the parties are unable to arrive at a mutually acceptable date, South Central Bell should be compelled to make the information available for inspection at a prescribed time.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. LDDS's motion to compel South Central Bell to respond further to Interrogatory 23 and to Interrogatory 35(b) is denied.

2. LDDS's motion to compel South Central Bell in response to Interrogatory 32(g), to furnish LDDS a copy of the study conducted by South Central Bell analyzing the amount of toll contribution that the company believes will be lost if competition is permitted in the intraLATA toll market is denied.

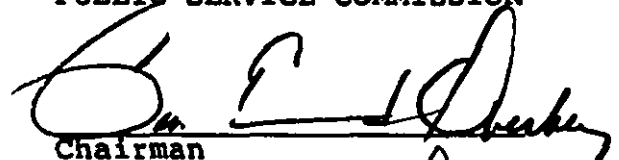
3. South Central Bell shall, within 10 days of the date of this Order, respond to Interrogatory 37(a) and Interrogatory 37(b).

4. South Central Bell shall, within 10 days of the date of this Order, produce and deliver to LDDS the map requested in Production Request No. 1 containing all the information set forth in the request.

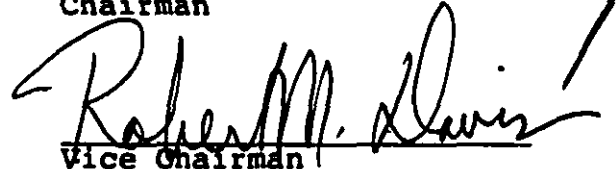
5. Unless the parties can reach a mutually agreeable date, South Central Bell shall, within 10 days of the date of this Order, furnish to LDDS a list of 6 dates, 2 for each of the first 3 periods of 5 consecutive working days thereafter, during which LDDS shall be allowed to inspect and copy the information which South Central Bell has agreed to make available in its Responses to Interrogatories 1, 2, 6, 8, 9, and 14 and Requests for Production Numbers 9, 10, 11, 12, 13, 17, and 29.

Done at Frankfort, Kentucky, this 8th day of November, 1989.

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman

Commissioner

ATTEST:

Executive Director